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Palantir Technologies Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PALANTIR TECHNOLOGIES INC., a
Delaware corporation,

Plaintiff,

vs.

MARC L. ABRAMOWITZ, in his individual
capacity and as trustee of the MARC
ABRAMOWITZ CHARITABLE TRUST
NO. 2, KT4 PARTNERS LLC, a Delaware
limited liability company, and DOES 1 through
50, inclusive,

Defendants.

Case No. 5:19-cv-06879-BLF

**PLAINTIFF PALANTIR TECHNOLOGIES
INC.'S OPPOSITION TO DEFENDANTS'
MOTION TO STAY DISCOVERY**

Date: February 13, 2020
Time: 9:00 a.m.
Courtroom 3 (5th Floor)
Judge: Hon. Beth L. Freeman

1 **I. INTRODUCTION**

2 Over three years ago, Palantir initiated this litigation against Defendants for stealing its
 3 trade secrets and using them to launch a competing business. But despite Palantir’s efforts to move
 4 this case toward resolution, Defendants have blocked Palantir from obtaining any discovery to date.
 5 For example, after the state court accepted Palantir’s trade secret disclosure, and directed discovery
 6 to move forward expeditiously, Defendants refused to conduct any discovery for months because of
 7 the possibility that this case may be removed to federal court. And once in this Court, Defendants
 8 attempted to force a stay by refusing to promptly participate in a conference under Federal Rule of
 9 Civil Procedure 26(f) and precluding Palantir from serving any discovery requests. As a result of
 10 Defendants’ refusal, Palantir was forced to seek intervention from the Magistrate Judge, who
 11 ordered Defendants to promptly participate in the Rule 26(f) conference.

12 In their latest effort to delay or avoid discovery, Defendants have now filed this Motion to
 13 Stay pending a ruling on their motion to dismiss. But “[t]he Federal Rules of Civil Procedure do
 14 not provide for automatic or blanket stays of discovery when a potentially dispositive motion is
 15 pending.” *Singh v. Google, Inc.*, No. 16-CV-03734-BLF, 2016 WL 10807598, at *1 (N.D. Cal.
 16 Nov. 4, 2016) (internal citation omitted). Staying discovery is an extraordinary measure, and “[a]
 17 party seeking a stay of discovery carries the heavy burden of making a strong showing why
 18 discovery should be denied.” *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990)
 19 (quotation marks omitted). Defendants cannot meet their “heavy burden” for two reasons:

20 *First*, before discovery can be stayed, Defendants must establish that Palantir’s claims are
 21 frivolous and that their motion to dismiss will dispose of this case in its entirety. Defendants
 22 cannot do so here. As explained in Palantir’s opposition to the motion to dismiss, Defendants’
 23 motion is meritless because, among other reasons, it asks the court to weigh in on numerous issues
 24 of fact that cannot be resolved at this stage of the proceedings. Consequently, because at least one,
 25 and likely all, of Palantir’s claims will survive Defendants’ motion to dismiss (indeed, most of
 26 Palantir’s claims have already survived Defendants’ demurrer in state court), a discovery stay is
 27 improper. *See Optronix Techs., Inc. v. Ningbo Sunny Elec. Co.*, 2018 WL 1569811, at *1 (N.D.
 28 Cal. Feb. 16, 2018) (denying motion to stay where defendants cited nothing “outside of their own

opinion of the Amended Complaint's deficiencies"); *Anderson v. SeaWorld Parks & Entm't, Inc.*, 2017 WL 6448206, at *2 (N.D. Cal. Dec. 18, 2017) (denying motion to stay because "the Court cannot say with confidence that . . . there are no material facts in dispute").

Regardless, even assuming that Defendants' motion to dismiss were granted in its entirety, a discovery stay would still be improper because Palantir would be entitled to an opportunity to cure any deficiencies in its complaint. Leave to amend would be particularly appropriate here because the state court overruled Defendants' demurrer to Palantir's current state law claims, and Palantir asserted its RICO claim for the first time in the operative Third Amended Complaint ("TAC"). *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (leave to amend should "be freely given"). Accordingly, Defendants' motion to dismiss would not dispose of this entire case. *See Singh*, 2016 WL 10807598, at *2 ("[E]ven if Defendant were correct that Plaintiff's claims must be dismissed as alleged, the Court would consider whether leave to amend should be granted, rendering [Defendant's] motion not dispositive."); *Nat'l Union Fire Ins. Co. of Pittsburgh, PA. v. Res. Dev. Servs., Inc.*, 2010 WL 3746290, at *1 (N.D. Cal. Sept. 18, 2010) ("[Defendant] [incorrectly] assumes that even if the district court finds that (some or all of) the claims are deficient, that leave to amend any of them would not be granted. Therefore, the court finds that the motion to dismiss is not 'potentially dispositive' at this juncture.").

Second, to justify a discovery stay, Defendants must establish with specific facts that conducting discovery while their motion to dismiss is pending would impose an undue burden. But instead of presenting such facts here, Defendants assert in a conclusory manner that they "anticipate that Palantir will pursue a vexatious discovery strategy aimed at maximizing the litigation expenses." (Mot. at 5–6.) Such conclusory assertions cannot satisfy Defendants' burden as a matter of law. *See Singh*, 2016 WL 10807598, at *2 ("Google fails to identify any discovery burdens, and offers no particular or specific facts to support its assertion that a stay would be necessary to spare the parties or the Court from the 'burden' of discovery."); *Smith v. Levine Leichtman Capital Partners, Inc.*, 2011 WL 13153189, at *2 (N.D. Cal. Feb. 11, 2011) ("The expense of discovery alone does not amount to good cause to stay discovery . . .").

For all these reasons, and those set forth below, the Court should deny Defendants' Motion.

1 **II. BACKGROUND**

2 On September 1, 2016, Palantir initiated this action in the California Superior Court,
 3 alleging that Defendants engaged in a multi-year scheme to defraud Palantir, steal its trade secrets,
 4 and then use those trade secrets to set up competing businesses. In the three years of litigation that
 5 followed, the state court (among other things) overruled Defendants' demurrer to Palantir's claims
 6 for trade secret misappropriation and breach of contract, accepted Palantir's trade secret disclosure
 7 under California Code of Civil Procedure § 2019.210, and directed the parties to conduct discovery
 8 with an eye toward a trial date in June 2020.

9 Despite Palantir's efforts to move this action forward, Defendants have blocked it from
 10 obtaining any discovery to date. Once the state court accepted Palantir's trade secret disclosure and
 11 lifted the automatic discovery stay under § 2019.210, it instructed the parties at a June 4, 2019 case
 12 management conference that discovery should proceed expeditiously. Palantir served discovery
 13 requests almost immediately thereafter. Three weeks later, Palantir also filed a motion for leave to
 14 amend the complaint to add a federal RICO claim against all Defendants.

15 Rather than engage in discovery, however, Defendants asserted that they would not provide
 16 any substantive responses on any of Palantir's claims until the state court ruled on Palantir's
 17 motion for leave to amend. According to Defendants, no discovery could take place due to the
 18 possibility of removal to federal court if that motion were granted. In light of this unilateral
 19 discovery stay, Palantir filed a motion to compel discovery responses and for sanctions. Days
 20 before the hearing on Palantir's motion to compel, the state court granted Palantir's motion for
 21 leave to amend, and Defendants removed the case to this Court on October 22, 2019. All in all,
 22 Defendants' unilateral discovery stay in state court has already delayed discovery by four months.
 23 To date, Palantir has not received a single document, a single response to an interrogatory, or a
 24 single deposition in this case.

25 Once in this Court, Defendants continued their attempts to delay discovery and the
 26 resolution of this action. After Defendants filed their motion to dismiss on October 29, 2019, they
 27 refused to promptly participate in an initial case conference under Federal Rule of Civil Procedure
 28 26(f) without offering any legitimate reasons for that refusal. Because Palantir could not serve

discovery until the Rule 26(f) conference had occurred, Defendants effectively sought to help themselves to yet another months-long stay of discovery. Palantir was thus forced to file a motion with the Magistrate Judge requesting the Court compel Defendants to hold a Rule 26(f) conference. On December 4, 2019, Magistrate Judge Cousins granted Palantir's request and ordered Defendants to participate in the conference by December 17.

On December 9, 2019, before the parties conducted their Rule 26(f) conference and before any discovery was propounded, Defendants filed this Motion to Stay. Since then, on December 13, 2019, the parties conducted their Rule 26(f) conference, and Palantir served a narrow set of requests for production and interrogatories.

III. ARGUMENT

“Under Ninth Circuit law, a party seeking a stay of discovery carries the heavy burden of making a strong showing why discovery should be denied.” *Power Integrations, Inc. v. Park*, No. 16-CV-02366-BLF, 2016 WL 10859441, at *1 (N.D. Cal. Dec. 2, 2016) (citations omitted). This heavy burden “is not satisfied by superficial statements or vague articulations demonstrating nothing more than the traditional burdens of litigation.” *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 2018 WL 1569811, at *1 (N.D. Cal. Feb. 16, 2018). Nor is that burden satisfied by the mere filing of a motion to dismiss; “[i]f it was, every case with a pending second-round motion to dismiss—the large majority of federal actions—would be stayed at some point. That sort of inefficient and chaotic system is not contemplated by the Federal Rules . . .” *Id.* at *2; *see also Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990) (“Had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. Pro. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect. In fact, such a notion is directly at odds with the need for expeditious resolution of litigation.”).

Instead, discovery may be stayed only when the Court “is convinced that the plaintiff will be unable to state a claim for relief” because “a pending motion [is] potentially dispositive of the entire case” and “can be decided absent additional discovery.” *Power Integrations*, 2016 WL 10859441, at *1 (citations omitted). In the context of motions brought under Rule 12(b)(6), this means that the stated claims for relief must be “utterly frivolous, or filed merely in order to conduct

1 a ‘fishing expedition’ or for settlement value.” *Gray*, 133 F.R.D. at 40. In other words, a Rule
 2 12(b)(6) motion “could be dispositive of the entire action, *if* granted in its entirety and *if* the court
 3 decides that further leave to amend should not be permitted. But those are big ‘ifs.’” *Optronic*,
 4 2018 WL 1569811, at *1 (emphases in original).

5 Even when a defendant demonstrates that a pending motion to dismiss is likely to be
 6 granted in its entirety without leave to amend, a discovery stay is still improper in the absence of
 7 good cause under Rule 26(c)(1). *See Smith v. Levine Leichtman Capital Partners, Inc.*, 2011 WL
 8 13153189, at *2 (N.D. Cal. Feb. 11, 2011). In this context, good cause requires a specific showing
 9 that discovery would impose an undue burden going beyond the traditional litigation costs. *Id.*
 10 (“The expense of discovery alone does not amount to good cause to stay discovery . . .”).
 11 “[S]tereotyped or conclusory statements” are insufficient to satisfy this requirement. *Id.* at *1
 12 (citations omitted).

13 Here, Defendants cannot come close to establishing (i) that Palantir’s claims are so
 14 frivolous that their pending motion to dismiss will dispose of the entire case, or (ii) that they will
 15 suffer undue burden in the absence of a discovery stay.

16 **A. Defendants Cannot Show That Their Motion Will Dispose of the Entire Case**

17 **1. Defendants’ Motion to Dismiss is Without Merit**

18 Despite the fact that the state court has already rejected Defendants’ attempt to dismiss
 19 Palantir’s trade secret and breach of contract claims, Defendants argue that their motion to dismiss
 20 will result in the complete disposition of this action. (Mot. at 2 –4.) But Defendants offer little
 21 more “outside of their own opinion of the [Third] Amended Complaint’s deficiencies” and do not
 22 even attempt to explain “why the [Third] Amended Complaint is utterly frivolous, or filed merely
 23 in order to conduct a fishing expedition’ or for settlement value.” *Optronic*, 2018 WL 1569811, at
 24 *1 (citations omitted). As Palantir explained in detail in its opposition to Defendants’ motion to
 25 dismiss, each of its claims is viable and meritorious. Although Palantir will not repeat all of the
 26 reasons for rejecting Defendants’ motion here, some of its most glaring deficiencies can be
 27 summarized as follows:
 28

- 1 • RICO Claim: While Defendants assert that Palantir has insufficiently alleged injury
2 or the existence of a RICO enterprise, they ignore or mischaracterize Palantir
3 allegations. Palantir has alleged concrete damages from Defendants’ fraudulent
4 RICO scheme both in the form of the profits Defendants gained at Palantir’s
5 expense and the costs they imposed on Palantir, including by forcing it to initiate
6 several legal proceedings to mitigate the harm from Defendants’ misconduct. (Opp.
7 to MTD (Dkt. 38) at 6–8.) Palantir has also alleged that Defendants formed an
8 “association-in-fact” RICO enterprise that made numerous misrepresentations and
9 omissions—both to Palantir and in patent applications to the government—to carry
10 out its multi-year wire fraud scheme. (*Id.* at 8–20.) This is sufficient to plead a
11 valid RICO claim at this stage of the proceedings.
- 12 • Breach of Contract and Implied Covenant Claims: Although Defendants incorrectly
13 argue that the information they stole from Palantir was not covered by the
14 confidentiality agreements they are alleged to have breached, their arguments
15 require the Court to weigh in on several disputed issues of fact. Determinations as
16 to precisely what information Defendants stole, when they stole it, and under what
17 circumstances cannot be made on a motion to dismiss. (*Id.* at 21–23.)
- 18 • Trade Secrets Misappropriation Claim: Defendants assert that Palantir’s trade secret
19 claim is deficient because Palantir did not use “reasonable efforts” in maintaining
20 the confidentiality of its trade secrets. But even assuming that the trade secret
21 information was not covered by the confidentiality agreements with Defendants (it
22 was), Palantir has alleged facts showing that Defendants were independently
23 obligated to keep it secret. The law is clear that whether a party undertook
24 reasonable efforts to maintain the secrecy of a trade secret is a question of fact that
25 cannot be resolved on a motion to dismiss. (*Id.* at 25.)

26 Defendants therefore cannot show that their motion to dismiss will dispose of the entire
27 case or that any of Palantir’s claims are frivolous. Indeed, many of the issues at the heart of
28 Palantir’s claims require factual and credibility determinations that can only be made after

discovery takes place. Courts within this district routinely deny motions to stay under analogous circumstances. *See, e.g., Anderson v. SeaWorld Parks & Entm't, Inc.*, 2017 WL 6448206, at *2 (N.D. Cal. Dec. 18, 2017) (denying motion to stay because “the Court cannot say with confidence that . . . there are no material facts in dispute”); *Garcia v. Enter. Holdings, Inc.*, 2014 WL 4623007, at *3 (N.D. Cal. Sept. 15, 2014) (denying motion to stay when “the Court cannot conclude that the pending motion, though it challenges the sole claim in the operative complaint, will be potentially dispositive of the entire case”); *Malek v. Green*, No. 17-cv-00263-BLF (N.D. Cal. Mar. 30, 2017) (Dkt. No. 24 at 3) (denying motion to stay discovery because issues raised on the dispositive motion were “subjects of reasonable dispute, such that it cannot be confidently said that Defendants will succeed in ending the action or that their arguments are entirely meritorious”); *Svenson v. Google, Inc.*, No. 13-cv-04080-BLF (N.D. Cal. Nov. 26, 2014) (Dkt. No. 100 at 2) (denying motion to stay because the issues presented on a motion to dismiss were not “straightforward”); *Power Integrations*, 2016 WL 10859441, at *2 (denying motion to stay because issues presented on the motion were “the subjects of reasonable dispute”).

None of the three cases Defendants cite for the contrary proposition support a discovery stay in this case. For example, *Yiren Huang v. Futurewei Technologies, Inc.*, 2018 WL 1993503 (N.D. Cal. Apr. 27, 2018), involved a motion to transfer venue under 28 U.S.C. § 1404—not a motion to dismiss under Rule 12(b)(6)—and there was no dispute that an agreement between the parties required the lawsuit to be brought in Texas. *Id.* at *4. Given the reasonably probable transfer of the action, the court found good cause to stay discovery because it determined that the case would likely be consolidated with related actions in Texas and “coordinating discovery in the consolidated action will serve judicial economy and efficiency” *Id.* Such circumstances are not present here.

The other two cases Defendants rely on were class actions with expansive complaints that were overbroad on their face. In *Bush v. Vaco Tech. Serv., LLC*, No. 17-cv-05605-BLF (N.D. Cal. February 26, 2018) (Dkt. No. 38 at 2), the court agreed to stay discovery because it had already informed the parties that the pending motion to dismiss would be granted since the allegations in the complaint were grossly overbroad. Staying discovery therefore made sense because any

discovery requests would be too “oppressive” and “based on overbroad allegations that will not proceed.” *Id.* Similarly, in *In re Nexus 6p Prod. Liab. Litig.*, 2017 WL 3581188, at *2 (N.D. Cal. Aug. 18, 2017), a discovery stay was granted because the original complaint was “sprawling,” *In re Nexus 6p Prod. Liab. Litig.*, 2018 WL 3036734, at *2 (N.D. Cal. June 19, 2018), with ninety-five pages and twenty-two counts alleging numerous violations of state and federal law, and there was a strong probability that the motion to dismiss would obviate the need to conduct discovery on many of those allegations.

Unlike in these cases, Palantir’s complaint is neither frivolous nor “sprawling” or “overbroad” on its face. Each of Palantir’s claims is based on the same set of core facts concerning Defendants’ scheme to misappropriate its trade secrets and set up competing businesses. Defendants’ motion would therefore not narrow discovery as long as at least one of Palantir’s claims survives. As discussed above, it is reasonably likely that all claims—and certainly some claims—will survive Defendants’ motion (as they have previously).

2. Defendants Cannot Show That Palantir Would Be Denied Leave to Amend

Regardless, even assuming that Defendants’ motion would be granted in its entirety, Defendants would still have to show that Palantir’s claims cannot be cured through amendment before a discovery stay can be imposed. As this Court explained in denying a motion to stay under similar circumstances, “[E]ven if Defendant were correct that Plaintiff’s claims must be dismissed as alleged, the Court would consider whether leave to amend should be granted, rendering [Defendant’s] motion not dispositive.” *Singh v. Google, Inc.*, No. 16-CV-03734-BLF, 2016 WL 10807598, at *2 (N.D. Cal. Nov. 4, 2016); *Optronic*, 2018 WL 1569811, at *1 (denying motion to stay because it was “possible” that “leave to amend [would be] permitted”); *Nat’l Union Fire Ins. Co. of Pittsburgh, PA. v. Res. Dev. Servs., Inc.*, 2010 WL 3746290, at *1 (N.D. Cal. Sept. 18, 2010) (“[Defendant] [incorrectly] assumes that even if the district court finds that (some or all of) the claims are deficient, that leave to amend any of them would not be granted. Therefore, the court finds that the motion to dismiss is not ‘potentially dispositive’ at this juncture.”).

Defendants have not even attempted to argue that Palantir would not be entitled to leave to amend if any of its claims were found to be deficient. Leave to amend would be particularly

appropriate here because Palantir has *never* amended its complaint in response to a demurrer or a motion to dismiss. As noted above, the state court overruled Defendants’ demurrer as to Palantir’s current state law claims, and Palantir asserted its RICO claim for the first time in the TAC. If the TAC is found deficient, Palantir should be given an opportunity to cure the deficiency through amendment. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (leave to amend should “be freely given”). Accordingly, Defendants’ motion to dismiss cannot be “dispositive” of the entire case as a matter of law. *See Singh*, 2016 WL 10807598, at *2; *Nat’l Union Fire*, 2010 WL 3746290, at *1.

B. Defendants Cannot Show They Will Suffer an Undue Burden From Discovery

Even if Defendants could somehow establish that their motion will dispose of the entire case (and they cannot), a discovery stay would still be improper because Defendants have failed to show that they will suffer undue burden from discovery. *See Smith*, 2011 WL 13153189, at *2. All they have done is assert in the most conclusory fashion that “Defendants anticipate that Palantir will pursue a vexatious discovery strategy aimed at maximizing the litigation expenses” and that “[t]he potential service of voluminous discovery . . . would require substantial resources that are vastly disproportionate to the needs of the case.” (Mot. at 5–6.) These assertions cannot constitute “good cause” to stay discovery for two independent reasons:

First, it is well settled that “[t]he expense of discovery alone does not amount to good cause to stay discovery.” *Smith*, 2011 WL 13153189, at *2; *see also Optronic*, 2018 WL 1569811, at *2 (“[The good cause standard] is not satisfied by superficial statements or vague articulations demonstrating nothing more than the traditional burdens of litigation.”). Rather, to satisfy the good cause requirement, Defendants must offer some “particular or specific facts to support [their] assertion that a stay would be necessary to spare the parties or the Court from the ‘burden’ of discovery.” *Singh*, 2016 WL 10807598, at *2. Defendants have not presented such facts here and have instead asked the Court to trust their word that “Palantir will pursue a vexatious discovery strategy.” Such “stereotyped or conclusory statements” cannot constitute “good cause” as a matter of law. *Gray*, 133 F.R.D. at 40.

1 *Second*, Defendants are simply wrong that Palantir will seek broad and disproportionate
 2 discovery aimed at increasing their litigation costs. Indeed, any concerns about the breadth of
 3 discovery requests are more properly addressed by “a conference among the parties to establish a
 4 discovery plan, along with any necessary motions regarding discovery efforts,” not by a discovery
 5 stay. *In re Valence Tech. Sec. Litig.*, 1994 WL 758688, at *2 (N.D. Cal. Nov. 18, 1994).
 6 Accordingly, Defendants’ conclusory assertions about some unspecified discovery burden cannot
 7 justify a stay in these circumstances.

8 By contrast, Palantir will continue to suffer significant prejudice if discovery is delayed any
 9 longer. Since “memories fade and witnesses become unavailable over time,” additional delays
 10 would harm Palantir “[g]iven the glacial pace of the case so far.” *Roule v. Petraeus*, 2012 WL
 11 2367873, at *5 (N.D. Cal. June 21, 2012). This case has been pending for **over three years** without
 12 discovery, and allowing discovery to proceed “would promote the court’s interest, as well as that of
 13 the public, in judicial efficiency and timely resolution of litigation.” *San Francisco Tech. v. Kraco*
 14 *Enterprises LLC*, 2011 WL 2193397, at *3 (N.D. Cal. June 6, 2011) (allowing discovery to proceed
 15 to expedite a case that had “been pending for over one year”). In light of these factors, together
 16 with Defendants’ failure to articulate any specific facts to support their assertions of undue burden,
 17 no discovery stay is justified here.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Defendants’ motion to stay should be denied and Defendants
 20 should be ordered to fully comply with their discovery obligations.

21
 22 Dated: December 23, 2019

HUESTON HENNIGAN LLP

23
 24
 25 By: 

26 Moez M. Kaba
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 Palantir Technologies Inc.